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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,747	11/09/2001	Theodore R. O'Hagen	OHA-001	7397

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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,747

Applicant(s)

O'HAGEN, THEODORE R.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) 23-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

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1. Applicant's election without traverse of Group I (Claims 1-17) in Paper No. 4 is acknowledged. Cancellation of non-elected claims 18-22 is acknowledged. Although applicant has indicated that newly submitted claims 23-27 read on the elected invention, they are not believed to do so for the following reason:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, drawn to an apparatus for transferring a load with a support member, classified in class 414, subclass 477.
- II. Claims 23-27, drawn to an apparatus for transferring a load, classified in class 298, subclass 12.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as transferring a load from a vehicle without a support member. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Claims 23-27 are withdrawn from further consideration pursuant to 37 CFR

1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "32" has been used to designate both a boat carrier and a cable (see page 9, paragraphs 27 and 28). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mechanism coupled to the gate to open the gate (claim 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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8. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no basis in the written specification for a mechanism coupled to the gate to open the gate as the point approaches the second location.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 6, "coupled to the having" is unclear;

and lines 11 and 14, --at least one-- should be inserted before "arm".

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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12. Claims 11, 13, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by McQueen (US 3,450,437).

McQueen shows a vehicle having a support member 1, bed 10 coupled to the support member, movable in a first direction relative to the vehicle, and pivotable about a point adjacent to the rear edge of the support member, and arms 31 coupled to the support member via rollers 33-34 and to the bed "adjacent to the front end", as broadly claimed, the arms moving linearly as they and the bed roll along the support member in the first direction until the rollers encounter stops 41 which cause the arms to pivot and thus tilt the bed relative to the vehicle, as seen in figure 1.

13. Claims 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Trueblood (US 6,077,024).

Trueblood shows a vehicle having a support surface 15, 25, bed 11, and arms 21, 23 which are constrained to move linearly at a first location of the vehicle to move the bed in a first direction and are constrained to rotary motion at a second location of the vehicle to tilt the bed, as seen in figures 8b and 8c.

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al (US 6,099,232) in view of Trueblood.

Dixon et al show a vehicle having a movable support member 130 coupled to and movable in a first direction relative to frame 120, bed 110, 112 movable adjacent the upper surface of the support member in the first direction and pivotable about an axis adjacent the rear edge of the support member, and arms 136 coupled to the bed.

Although the arms are coupled to the support member and limit the amount of pivoting movement of the bed relative thereto, they do not move along the support member and raise or tilt the bed, nor are they coupled adjacent the front end of the bed.

Trueblood, as noted above, shows the arms to have all these features.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dixon et al by utilizing arms coupled adjacent to the front of the bed and movable relative to the support member to lift and tilt the bed relative thereto, as shown by Trueblood, as this would be less complex by eliminating the need for a separate winch 118 to move the bed relative to the support member.

Although Dixon et al show the tailgate to be removed, it would have been a mere design expediency to incorporate it into the invention as suggested by Trueblood.

16. Claims 1-10, 12-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trueblood in view of Dixon et al.

Trueblood does not show the support member movable relative to the vehicle.

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Dixon et al, as noted above, show this feature.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Trueblood by utilizing a movable support member, as shown by Dixon et al, for greater efficiency and flexibility during loading and unloading.

17. Claims 1, 3, 4, 6-13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al in view of McQueen.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Dixon et al by utilizing arms coupled adjacent to the front of the bed and movable relative to the support member to lift and tilt the bed relative thereto, as shown by McQueen, as this would be less complex by eliminating the need for a separate winch 118 to move the bed relative to the support member.

18. Claims 1, 3, 4, 6-10, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McQueen in view of Dixon et al.

McQueen does not show the support member movable relative to the vehicle.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of McQueen by utilizing a movable support member, as shown by Dixon et al, for greater efficiency and flexibility during loading and unloading.


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19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


James Keenan
Primary Examiner
Art Unit 3652

jwk
9/11/03